

1 Kenneth C Brooks (SBN 167,792)  
2 Law Office of Kenneth Brooks  
3 125 East Sunnyside Ave, Suite 103  
4 Campbell, CA 95008  
5 Tel: 408-368-7997  
6 Fax: 877-730-4315  
7 kcb@brookspatents.com  
8 Plaintiff

ADR

FILED

2010 SEP 13 A 9:32

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-FILING

8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 Kenneth C. Brooks  
12 Plaintiff,  
13 vs.

14  
15 The Procter & Gamble  
16 Manufacturing Company  
17 Defendant

Case No.:

18 CV 10-04089 SBA

19 COMPLAINT FOR FALSE MARKING

20 Plaintiff KENNETH C. BROOKS (hereinafter referred to as  
21 "BROOKS"), for his Complaint against Defendant The Procter &  
22 Gamble Manufacturing Company (hereinafter referred to as  
23 DEFENDANT) alleges as follows:

24 NATURE OF THE CASE

25 1. This is an action for false patent marking under Title  
26 35, Section 292 of the United States Code.  
27  
28 ////  
29 ////  
30 ////

2. At least in part, it is alleged that DEFENDANT's marking of a plurality of their products with patent numbers of expired patents is a violation of 35 U.S.C. § 292(a).

## THE PARTIES

3. BROOKS is an individual residing in the County of Santa Clara in the state of California with a correspondence address of 125 E. Sunnyside Ave., Suite 103, Campbell, California 95008.

4. Upon information and belief, DEFENDANT is a corporation organized and existing under the laws of Ohio, having its principal place of business at One Procter and Gamble Plaza, Cincinnati, OH 45202.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1395(a), because DEFENDANT's products, the subject matter of this cause of action, are offered for sale and sold in various retail stores in this District.

7. BROOKS brings this action under 35 U.S.C. § 292(b), which provides that any person may sue for civil monetary penalties for false patent marking.

1                   **DEFENDANT'S FALSELY MARKED PRODUCTS**

2       8. Upon information and believe, DEFENDANT manufactured  
3 and marketed, or caused to be manufactured and/or marketed, and  
4 presently manufactures and/or markets, or causes to be  
5 manufactured and/or marketed, products for sale to the general  
6 consuming public, including, among other things, floss for use  
7 in cleaning teeth.

8  
9       9. Upon information and believe, DEFENDANT has in the past  
10 marked, or caused to be marked, and presently marks, or causes  
11 to be marked, at least the following products: Crest Glide Deep  
12 Clean Floss and Crest Glide Comfort Plus Floss Mint.

13                   **CAUSES OF ACTION FOR FALSE PATENT MARKING**

14       10. BROOKS repeats, realleges and incorporates by reference  
15 each and every paragraph above as if set forth fully herein.

16  
17       11. When a patent expires, all monopoly rights in the  
18 patent terminate irrevocably. Therefore, a product marked with  
19 an expired patent is not currently patented by such expired  
20 patent.

21  
22       13. Upon information and belief, DEFENDANT is a  
23 sophisticated company that has many decades of experience with  
24 applying for, obtaining, and litigating patents, and knows,  
25 themselves or by their representatives, at least constructively,  
26 that patents expire, i.e., that they do not have an indefinitely  
27 duration.

1  
2       14. Upon information and belief, DEFENDANT knows, or at  
3 least should know, themselves or by their representative, that  
4 one or more of the patents marked on the products identified in  
5 paragraph 9 above are expired.

6  
7       15. Because all monopoly rights in an expired patent have  
8 terminated, DEFENDANT cannot have any reasonable belief that the  
9 products identified in paragraph 11 above are patented or  
10 covered by the expired patents marked on such products.

11  
12    **DAMAGES**

13       16. Each expired patent marked on the products identified  
14 in paragraph 9 is likely to, or at least has the potential to,  
15 discourage or deter each person or company, itself or by its  
16 representatives, which views it from commercializing a competing  
17 product.

18  
19       17. Upon information and believe, DEFENDANT's marking of  
20 their products with the numbers of expired patents has  
21 wrongfully quelled competition with respect to such products to  
22 an immeasurable extent thereby causing harm to the United Stats  
23 in an amount which cannot be readily determined.

24  
25       18. Upon information and believe, for at least the reasons  
26 set forth herein, DEFENDANT have wrongfully and illegally  
27 advertised patent monopolies which they do not possess and, as a  
28 result, have likely benefitted in at least maintaining their

1 considerable market share with respect to the herein described  
2 products in the market place.

4       19. For at least the reasons provided herein, and/or for  
5 other reasons which will be later evidenced, each expired patent  
6 which is marked on a product likely, or at least potentially,  
7 contributes to the public harm. Therefore, each expired patent  
8 marked on a product multiplied by the number of products an/or  
9 packaging material on which it appears, e.g., each product or  
10 package sold in a retail store, is a separate "offense" pursuant  
11 to 35 U.S.C. § 292(a).

## **PRAYER FOR RELIEF**

14 WHEREFORE, BROOKS request this Court, pursuant to 35 U.S.C.  
15 §292, to:

16 A. Enter judgment against DEFENDANT and in favor of BROOKS  
17 for the violations alleged in this Complaint;

18 B. Order DEFENDANT to pay a civil monetary fine of  
19 \$500.00 per false marking "offense", or an alternative amount as  
20 determined by the Court, one-half of which shall be paid to the  
21 United States.

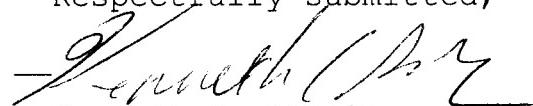
22 C. Grant BROOKS such other and further relief as it may  
23 deem just and equitable.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedures 38(b), BROOKS  
hereby demand a trial by jury on all issues so triable.

1  
2 Dated: September 11, 2010  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

  
Kenneth C. Brooks

*Pro Se*